

HOUSE BILL NO. 656

INTRODUCED BY R. MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DRIVER REQUESTED TO TAKE A TEST FOR ALCOHOL OR DRUG CONCENTRATION HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BY TELEPHONE BEFORE DECIDING WHETHER TO TAKE THE TEST AND MUST BE INFORMED OF THAT RIGHT WHEN THE TEST IS REQUESTED; PROVIDING THAT IF THE RIGHT IS EXERCISED, THE LICENSE MAY NOT BE SEIZED UNLESS THE CONSULTATION DOES NOT OCCUR AS SOON AS POSSIBLE AND THE TEST IS REFUSED OR UNLESS THE CONSULTATION OCCURS AND THE TEST IS REFUSED; AND AMENDING SECTION 61-8-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) (a) An arrested person has the right to contact and consult with an attorney by telephone before deciding whether to take the test, and the officer shall inform the person of that right immediately after requesting the person to take a test. The person shall contact and consult with an attorney as soon as possible under the particular circumstances of the case. ~~¶ Except as provided in subsection (4)(b), if an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license.~~

(b) The license may not be seized if the person has requested consultation with an attorney, unless:

(i) the person does not contact and consult with an attorney as soon as possible under the particular circumstances of the case and refuses to submit to one or more tests; or

(ii) the person does contact and consult with an attorney as soon as possible under the particular circumstances of the case and after the consultation refuses to submit to one or more tests.

~~(c) The~~ If the license is seized, the peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,

1 the department shall:

2 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

3 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
4 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
5 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
6 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
7 effect as a previous testing refusal for purposes of this subsection (6)(b).

8 (7) A nonresident driver's license seized under this section must be sent by the department to the
9 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
10 more tests.

11 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
12 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
13 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
14 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
15 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
16 under this subsection is not reviewable under 61-8-403.

17 (9) A suspension under this section is subject to review as provided in this part.

18 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes
19 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
20 offense not in this part."

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